

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	§	
	§	
Streamlining Deployment of Small Cell	§	WT Docket No. 16-421
Infrastructure by Improving Wireless	§	
Facilities Siting Policies	§	
Mobilitie, LLC Petition for Declaratory		
Ruling		

**REPLY COMMENTS
OF
THE CITY OF ROCKPORT, TEXAS**

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These Reply Comments are filed on behalf of the City of Rockport, Texas (“City” or “Rockport”) in response to Comments previously submitted herein by Competitive Carriers Association (“CCA”) pursuant to the Public Notice,¹ and also regarding the Petition for Declaratory Ruling submitted by Mobilitie, LLC (“Mobilitie”).²

I. INTRODUCTION

Rockport appreciates the opportunity to provide these reply comments. Rockport did not file initial Comments, but supports the Comments filed herein by the Texas Municipal League, and the joint Comments submitted on behalf of the National League of Cities, the National Association of Telecommunications Officers and Advisors, the National Association of Towns and Townships, the National Association of Counties, the National Association of Regional Council, and the Government Finance Officers Association.

The reason for Rockport’s reply comments is its mention in the Comments filed by CCA, and a desire to place its actions in context and thereby demonstrate the reasonableness and

¹ Federal Communications Commission, *Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling*, WT Docket No. 16-421 (Dec. 22, 2016) (“Public Notice”).

² Mobilitie, LLC Petition for Declaratory Ruling, *Promoting Broadband for All Americans by Prohibiting Excessive Charges for Access to Public Rights of Way* (filed Nov. 15, 2016) (“Mobilitie Petition”).

necessity of Rockport's implementation of a temporary moratorium on the submission, acceptance, processing, and approval of any application for any permit or license for the installation of above-ground wireless communications facilities in the public right-of-way in the City. These reply comments will explain the concerns driving this decision by the City, to-wit: public safety and the economic health of the community.

II. PUBLIC SAFETY CONCERNS

The City of Rockport is situated in southeastern Texas, directly on the Gulf Coast. It has a population of approximately 10,000 full-time residents, although its population soars on weekends and holidays with persons taking advantage of its boating and fishing activities, and during the winter months when approximately 8,000 Winter Texans choose to reside here to avoid the cold northern climes. Its coastal location makes it a tourist destination for bird watching, fishing, sailing, art, and history. It is home to the endangered Whooping Crane—61,500 visitors tour the Aransas National Wildlife Refuge by land or boat annually. The Migratory Bird Treaty Act established a migratory bird fly way over the City.

The same geography that draws residents and visitors to Rockport also makes the area vulnerable to hurricanes and the destruction caused by high winds and storm surges. During hurricanes, not only are buildings damaged and destroyed, but also infrastructure and vital public facilities. Anything that becomes airborne in high winds becomes a missile that threatens lives and property. Utility poles and telecomm towers are no exception.

In 2008, after the vast destruction along the Texas coast wreaked by Hurricane Ike, the Public Utility Commission of Texas ("PUC") commissioned a cost-benefit analysis of the Deployment of Utility Infrastructure Upgrades and Storm Hardening Programs.³ The report

³ *Cost-Benefit Analysis of the Department of Utility Infrastructure Upgrades and Storm Hardening Programs*, PUC Project No. 36375, instituted November 12, 2008.

issued by the contractor (the “Quanta Report”) summarizes what residents of the Texas coast already knew—hurricanes can be incredibly destructive to utility infrastructure:

Hurricanes cause damage to utility systems in a variety of ways. Many utilities report that a majority of damage is due to entire trees blowing over into power lines, which results in broken conductors, broken crossarms, broken insulators, broken poles, and leaning poles. . . Other hurricanes caused damage primarily by *blowing over structures*. Damage can also result from flying tree branches, sheet metal, and a variety of other debris. . . . When a hurricane approaches land, it blows a wall of water onto shore called a storm surge. A storm surge tends to pick up a large amount of sand and debris. The sand can bury and contaminate pad-mounted equipment, and the debris can damage and dislodge pad-mounted equipment. When the storm surge recedes, it can carry away sand and dirt, leaving formerly underground cables, vaults, and manholes exposed.⁴

The Quanta Report describes 15 tropical storms or hurricanes that struck the Gulf Coast of Texas between 1998 and 2008. On September 13, 2008, Hurricane Ike hit the Texas coast as a Category 2 hurricane, and has been described as the most destructive hurricane to ever hit Texas, and one of the deadliest.⁵ Entergy Texas, the electric utility serving Rockport and the surrounding area, reported Ike storm damage in the range of \$435 million to \$510 million, including 560 transmission structures replaced, 5,693 distribution poles replaced, 90,681 feet of underground facilities damaged, 50 substations damaged, and 12 substations flooded.⁶

Telephone utilities also suffer similar damages. AT&T Texas reported that Hurricane Ike damaged 1,746 poles, 1,200 of which had to be replaced, for a total storm damage cost of almost \$80 million. As noted in the Quanta Report, “[h]urricanes seem to most consistently cause damage to utility poles, which is similar to the case for electric utilities. . . . Telecomm utilities

⁴ PUC Project No. 36375, Quanta Technology, Cost-Benefit Analysis of the Deployment of Utility Infrastructure Upgrades and Storm Hardening Programs Final Report at 13 (Mar. 4, 2009) (emphasis added) (“Quanta Technology Final Report”).

⁵ Quanta Technology Final Report at 18.

⁶ *Id.* at 24.

attributed more damage to storm surge and flooding than electric utilities. . . . Still, a majority of damage was due to high winds and flying debris.”⁷

Residents of Rockport would not be surprised by any of the information presented in the Quanta Report. The City Council of Rockport has long been mindful of the need to establish construction guidelines for all structures in the City to ensure that structures are safe and able to withstand expected weather conditions. The City has adopted provisions in its City Code to proactively protect both the safety of the public, and the safety and integrity of the bird sanctuaries in the City, including provisions found in Section 42-180 addressing wind-powered systems:

Design requirements.

- a. Freestanding wind powered systems will be limited to no more than 60 feet in total height within residential or commercial zoned districts and 100 feet in industrial zoned districts.
- b. Wind powered systems will be limited to one system for each 5 acres of land within residential or commercial zoned districts and one system for each 2.5 acres of land in industrial districts.
- c. Freestanding wind powered systems shall be setback from all property boundaries of any lot or from a habitable structure by a distance equal to at least one hundred twenty-five percent (125%) of the tower system’s height, as measured from average ground level at the tower foundation to the top of the highest point of the turbines’ or wind blades’ elevation. [the “fall zone”]

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- f. *Windstorm compliance:* Permit applications for wind systems shall be accompanied by either a letter or official documents from a certified windstorm engineer/inspector to verify that subject wind powered system complies with anchoring and structural standards to withstand windstorm forces applicable to the Rockport coastal area.

⁷ *Id.* at 30-31.

g. *Environmental compliance*: Proposed wind energy systems are subject to review by state and federal agencies responsible for the protection of listed species, migratory bird species, wetlands, and state waters. Permit review may require proof of consultation with jurisdictional agencies and additional biological assessments may have to be performed on the proposed site if it is determined by the reviewing agency that protected species are likely to be impacted on the site.

h. *Sanctuaries*: Proposed wind energy systems located within one (1) mile from designated bird sanctuaries, preserves, rookeries, breeding or foraging grounds, wildlife state or federal parks, or wildlife resource or management areas will require consultation and review by the Texas Parks and Wildlife Department and the U.S. Fish and Wildlife Services and may require mitigation or permitting measures by the applicant.⁸

When Mobilitie applied for a permit to install a 120-foot tall tower in the public right-of-way at the entrance to the Rockport High School, and less than one-quarter mile (1,200 feet) from the shore bird rookery park just purchased by the City for almost \$3 million, the City recognized the similarities of this proposed tower to the wind-powered systems regulated by the above-quoted ordinance provisions. At the same time, the City identified unique challenges presented by the proposed location of such a structure within the public right-of-way: what would the impact be on underground utilities already occupying the right-of-way; what would the impact be on the nearby rookery and the migratory birds; what threats would the tower pose during a hurricane or tropical storm to the public in general and to the high school and students specifically; what was the capacity of the surface of the right-of-way to accommodate such a tower as well as sidewalks for pedestrian traffic, landscaping, and traffic control devices? None of these concerns were mentioned by CCA in its Comments; indeed, it is highly unlikely that CCA was aware of any of these concerns when it included Rockport in its Comments.

⁸ City of Rockport Ordinances, § 42-180.

But, the City Council was well aware of these weighty concerns; the responsibility of the governing body to protect the public health, safety, and welfare of the citizens of the City is not lightly borne. As a result of identifying these very important public safety issues, and understanding that Mobilitie was not likely to be the only company seeking occupancy permission for the rights-of-way, the City determined that it needed to take a step back and evaluate its procedures and ordinance provisions in order to be able to adequately address these issues. On September 27, 2016, the City Council adopted an ordinance implementing a moratorium to provide time for a reasoned evaluation and review.

III. COMMUNITY ECONOMIC HEALTH

The City Council understands that it does not operate in a vacuum, that every decision it makes affects residents and visitors, businesses and industry. The City Council works hard to make Rockport what it is today—a popular beach community and tourist destination. The City government takes pride in the accolades it has received, including: #6 of the Top 40 Travel Destinations in the State of Texas in *Texas Highways Magazine*; #4 Best Small Coastal Town in *USA Today*, 10 Best Readers Choice; #7 Coolest Small Town in America in *Budget Travel*; #5 Long Weekend Hot Spot for Spring Migration Bird Watching in *Better Homes and Gardens*; and Top 100 Best Small Art Towns of America in *National Arts Administration*.

These recognitions are not just dust-gathering trophies sitting on a shelf in City Hall. They are the fuel for the economic engine of the City, helping to generate hotel/motel room rate revenues for the greater Rockport-Fulton area in 2016 of over \$17 million, dwarfing the City's general fund revenue for 2016–2017 of \$8.8 million. The City is home to 1,500 hotel/motel/condo/B&B rooms, meaning that approximately 700,000 people visit the area throughout the year, helping to generate over \$2.65 million in sales tax revenues to the City. Special events throughout the year entertain over 100,000 people each year.

It is not happenstance that the community thrives on the tourist and birding industries. The City government has taken great pains to protect and preserve the natural beauty of the Texas coastline and the welcoming atmosphere of the City. There can be no doubt that the appearance of the City's streets and thoroughfares plays a large part in the City's success as a destination. Likewise, the public facilities that serve the community, such as the public schools, also take pride in their appearance and in preserving the beach-town atmosphere.⁹

Therefore, when Mobilitie announced its intentions to place a 120-foot tall tower in the public right-of-way at the very entrance to the Rockport High School, the potential of industrializing the vicinity raised alarms within the community. Mobilitie evidently had little concern for the impact of its proposed facilities on any aspect of the community. The City Council identified this threat, however, and determined that it needed to take action to put in place the types of regulations that would both preserve the character of the community and advance the level of services available to its residents and visitors. In order to ensure a thoughtful process, the City implemented the moratorium mentioned by CCA in its Comments.

IV. CONCLUSION

When viewed in the abstract, the implementation of a moratorium by a local government could have many different meanings. But, when placed in context, as Rockport has attempted to do in these reply comments, a moratorium can be understood as a reasoned response to address new and vital concerns by a city government. The implication in the Comments of CCA that moratoria have no purpose other than to delay its members' deployment of facilities is

⁹ The City has adopted provisions in its zoning ordinance establishing an Historic District Zoning Overlay Code, establishing a high level of attention to site and building design, with the intention of revitalizing the Heritage District while preserving and perpetuating the history and heritage of Rockport. As stated in the Code, the goal is to enhance the attractiveness of the City's inner core to residents, tourists, and visitors, and serve as a support and stimulus to business and industry.

erroneous.¹⁰ The desire to speedily deploy facilities and services does not trump the protection of the public health, safety, and welfare or the economic interests of the community.

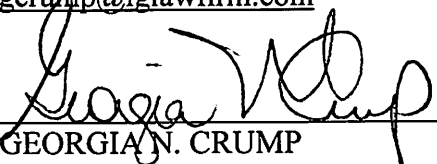
Rockport understands the usefulness of a regulatory environment that encourages the deployment of advanced services, but urges the Commission to take into consideration local concerns, local values, and local safety—all of which are best protected and served by local governments.

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¹⁰ In fact, throughout the moratorium period, the City has continued to communicate with Mobilite and indicated the City's interest in discussing Mobilite's plans for installations in the City.